

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.321 of 1993

Decided on : December 13, 2007

State of H.P.

...Appellant.

Versus

Ramesh Chand

...Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondent : Mr. Ramakant Sharma, Advocate, with Mr. Maley Kaushal, Advocate.

Surjit Singh, Judge(Oral)

State has appealed against the judgment of acquittal of the respondent, who was charged with and tried for offences, punishable under Sections 354 & 376 IPC.

2. On 24th October, 1991, a report was lodged with the police by the prosecutrix that on the previous day around 11 a.m. when she had gone to the field to mow grass, respondent came there and assaulted her with intent to outrage her modesty and that when she raised hue and cry, her mother reached the spot, on seeing whom the respondent ran away.

3. Police got the prosecutrix medically examined. The medico legal examination showed that she had been subjected to sexual intercourse a few days back, say 4-5-6 days prior to the lodging of the report. The police then recorded supplementary

Whether reporters of the local papers may be allowed to see the judgment?

statement of the prosecutrix, under Section 161 of the Code of Criminal Procedure, in which she disclosed that about 19-20 days back, the respondent called her to his *Bua's* (Aunt's) house where he used to live, on the pretext that his *Bua* was calling her and that when she reached there his *Bua* was not there and the respondent committed rape on her by showing her a knife.

4. Trial Court charged the respondent for having committed rape on the prosecutrix on 5th October, 1991 and having assaulted her with intent to outrage her modesty, on 23rd October, 1991. Respondent pleaded not guilty. Prosecution examined the prosecutrix as PW-3, mother of the prosecutrix Krishna Devi as PW-4 and the doctor, who conducted the medico legal examination of the prosecutrix, namely PW-1 Dr. Sangita Pabby.

5. Trial Court has disbelieved the version of the prosecution. Reasons given by the trial Court are that the testimony of the prosecutrix does not inspire confidence and not only that it is even contradicted by the testimony of her mother and also the medico legal evidence on record.

6. We have gone through the record and heard the learned Additional Advocate General.

7. PW-1 Dr. Sangita Pabby testified that the hymen of the prosecutrix was ruptured and its margins were swollen and bluish, meaning thereby that the margins of the ruptured hymen had not healed. In cross-examination, she admitted that normally the tears of hymen heal within five-six days and within eight-ten days they form into granules. She also stated that bluishness of the tears disappears within four-five days. However, she qualified her statement by saying that in case there is any infection and the subject does itching with

nails etc., the healing may be delayed. In the present case, the prosecutrix was not suffering from any infection, because in her own testimony, the prosecutrix admitted that she was not having any disease. Now, if the margins of the hymen were bluish in colour and swollen and had not healed, which process does not take more than four-five days, the story of the prosecution that the prosecutrix was raped 19-20 days before her medico legal examination, cannot be believed. The prosecutrix, while in the witness-box, stated that she had been raped by the respondent at his *Bua's* place 5-6 days prior to the incident of assault, which is dated 23rd October, 1991, but this statement is contrary to the charge framed against the respondent. The charge, as already noticed, is that the respondent raped the prosecutrix at his *Bua's* place on 5th October, 1991.

8. Evidence of assault with intent to outrage the modesty of the prosecutrix is also contradictory. While the prosecutrix herself says that she had only been assaulted, her mother Krishna Devi, examined as PW-4, has stated that the prosecutrix told her that she had been raped by the respondent for the second time on the date of the alleged assault. The mother has stated that the *Salwar* of the prosecutrix, which the police had taken into possession, was that which the prosecutrix was wearing on 23rd October, 1991, at the time of the alleged assault. Stains of semen have been found on this *Salwar* by the Chemical Examiner to whom it was sent. The *Salwar*, which the prosecutrix was wearing at the time of the alleged rape, had been washed, per testimony of PW-4 Krishna Devi, the mother of the prosecutrix. It is not understood how the stains of human semen appeared on the *Salwar*, when no rape had been committed on the prosecutrix on 23rd October, 1991, on which date she was wearing the

...4...

said *Salwar*, which per deposition of her mother, PW-4 Krishna Devi, is different from the *Salwar*, which the prosecutrix was wearing at the time of the earlier incident.

9. In view of the abovestated position, we see no reason to interfere with the judgment of the trial Court. Hence, the appeal is dismissed.

(Surjit Singh), J

December 13, 2007_(sd)

(Surinder Singh), J